In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1516

CHARLES A. SILVERMAN AND ULKU SILVERMAN,

PETITIONERS

v.

WILLIAM P. ROGERS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners, Mr. and Mrs. Silverman, seek review of the determination of the court of appeals that a favorable recommendation by the Secretary of State to the Attorney General is necessary for waiver of the requirement of 8 U.S.C. 1182(e) that an exchange visitor reside abroad for two years after the expiration of the term of the visit before returning to the United States. Mrs. Silverman is a Turkish citizen who came to this country as an exchange visitor and married an American while here. The Secretary of State, acting on the

basis of extensive consultations with the Agency for International Development and the government of Turkey, declined to make a favorable recommendation, notwithstanding the fact that the Immigration and Naturalization Service had determined that "exceptional hardship" to Mr. Silverman would result from imposition of the statutory foreign residence requirement. Petitioners then sought an injunction in the federal district court in Massachusetts against the institution of deportation proceedings against Mrs. Silverman. The district court granted the injunction, 309 F. Supp. 570, but the court of appeals unanimously reversed (Pet. App. A, pp. 24-33).

The principal question presented is whether the favorable recommendation of the Secretary of State is a prerequisite to eligibility for waiver of the two-year foreign residence requirement under 8 U.S.C. 1182(e). On this question, we rely upon the thorough opinion of the court of appeals, which canvasses the pertinent legislative history underlying the statute. The court's review shows that Congress was influenced by the foreign relations considerations which often are implicated in applications for waivers, particularly where the visitor's home country does not consent (as in this case); for this reason, Congress determined to give the Secretary of State the power to prevent an exchange visitor from remaining in this country longer than the authorized period for his study and training.[1]

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[1] Requests for waiver of the two-year foreign residence period are rarely granted. This is because, as the various congressional reports make clear, the primary purpose of the exchange visitor

Petitioners also contend that if the Secretary's favorable recommendation was necessary, they were entitled to a formal hearing before his decision. The statute does not, however, contemplate a hearing. And as the Secretary would normally base his decision whether to approve a waiver request on communications with other agencies and governments concerned (the existence of hardship having been determined by the Immigration and Naturalization Service), such a hearing would be inappropriate. See *Secretary of Defense* v. *Le Khac Bong*, 410 F. 2d 252 (C.A.D.C.).

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program is to improve understanding and relations between the United States and foreign countries by permitting principally underdeveloped nations to send their citizens here for a limited period of education and training, after which, better equipped, they may return to their own nation or some other underdeveloped country to put their skills and learning into practice. To insure that the exchange visitor program not become an avenue for immigration, the two-year foreign residence requirement was added to the statute in 1956. See S. Rep. No. 1608, 84th Cong., 2d Sess. Obviously, if waivers of the foreign residence requirement were liberally granted, the purpose of the program would be subverted. That is particularly true where, as here, the foreign country itself desires the return of its citizen. See Pet. App. A, p. 29; S. Rep. No. 372, 87th Cong., 1st Sess., pp. 19-20. The "public interest" waiver, which petitioners concede requires the consent of the Secretary of State, was added to the statute in 1956. The "hardship" waiver, involved here, was included in the 1961 amendments, which also fortified the role of the Secretary in the "public interest" waiver by providing that the Secretary must approve the two-year period spent by an alien abroad as fulfilling the purposes of the Mutual Educational and Cultural Exchange Act. See H. Rep. No. 1094, 87th Cong., 1st Sess., p. 16. Petitioners' argument that the Secretary of State plays no part in the administration of the "hardship" waiver is not well founded in view of the possible effect on foreign relations that any waiver of the two-year foreign residence period would have when not consented to by the foreign country involved.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1971.

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